

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Matthew Starnes,

Civil No. 09-2491 (MJD/SRN)

Petitioner,
v.

MEMORANDUM AND ORDER

State of Minnesota,

Respondent.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Susan Richard Nelson. The Magistrate Judge has recommended that Petitioner's application for a writ of habeas corpus under 28 U.S.C. § 2254 be denied. No objections have been filed to the Report and Recommendation in the time period permitted. Therefore, the Report and Recommendation will be adopted, and Petitioner's habeas corpus petition will be denied.

A § 2254 habeas corpus petitioner cannot appeal a denial of his petition unless he is granted a Certificate of Appealability, ("COA"). 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1). A COA cannot be granted, unless the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(3). To make such a showing, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. Daniel, 529 U.S. 473, 484 (2000). In this case, the Court finds it highly unlikely that any other court, including the Eighth Circuit Court of Appeals, would decide Petitioner's claims any differently than they have been decided here. Petitioner has not identified, (and the Court cannot independently discern), anything novel, noteworthy or worrisome about this case that warrants appellate review. Thus, the Court finds that Petitioner is not entitled to a COA

in this case.

Based upon the foregoing, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

- (1) Petitioner's application for a writ of habeas corpus, (Docket No. 1), is **DENIED**.
- (2) This action is **DISMISSED WITH PREJUDICE**.
- (3) Petitioner will **NOT** be granted a Certificate of Appealability in this matter.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: May 19, 2010

MICHAEL J. DAVIS
Chief Judge
United States District Court